IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

OP.No. 5826 of 2001(R)

PETITIONER:

O.L.JOHN,
ORATHIL HOUSE,
OPP. HINDUSTAN COIR,
KALAVOOR.P.O., ALAPPUZHA.

BY ADV. SRI.V.GIRI

RESPONDENTS:
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1. THE GENERAL MANAGER, EXCEL GLASSES LTD.,
PATHIRAPPALLY.P.O.,
ALAPPUZHA.

2. LABOUR COURT, ALAPPUZHA.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 5826/2001

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE CLAIM STATEMENT FILED Y THE PETITIONER IN I.D.NO. 94/96 BEFORE THE LABOUR COURT, KOLLAM.

EXT.P2 COPY OF THE WRITTEN OBJECTION FILED BY THE 1ST RESPONDENT IN I.D.NO. 94/96 BEFORE THE LABOUR COURT, KOLLAM.

EXT.P3 COPY OF THE ENQUIRY REPORT DATED 17/1/95 OF THE ENQUIRY OFFICER ON THE CHARGES AGAINST THE PETITIONER.

EXT.P4 COPY OF THE JUDGMENT DATED 21/12/98 IN CC NO. 236/96 OF THE CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA.

EXT.P5 COPY OF THE AWARD DATED 05/06/2000 IN I.D. NO. 94/96 OF THE LABOUR COURT, KOLLAM.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 5826 of 2001 R

Dated, this the 13th day of March, 2007

J U D G M E N T

The petitioner is challenging Ext.P5 award of the Labour Court, Kollam confirming the dismissal of petitioner for gross misconduct, by the 1st respondent. Heard counsel for the petitioner and Standing Counsel appearing for first respondent. Petitioner was admittedly working as a General Assistant in the Stores Department. The allegation against the petitioner is that on 16/06/1994 when a load of cullets were weighed, petitioner did manipulation to inflate the quantity causing loss to the management. The matter was immediately reported by the Security Guard to the Personnel Department before whom petitioner is said to have made statement admitting the misconduct. Even though petitioner later contended that petitioner signed only blank papers, Enquiry Officer rejected petitioner's claim and based on evidence, he found petitioner guilty. Since the misconduct is of serious nature, petitioner was awarded maximum punishment of dismissal. The Labour Court upheld the findings of guilt and punishment against which this O.P. is filed. Counsel for the petitioner contended that petitioner was acquitted in the

criminal case and the disciplinary proceedings also are based on same materials.

2. The learned counsel appearing for the 1st respondent on the other hand contended that the outcome of criminal case does not affect disciplinary action. According to him the Labour Court rightly found that the enquiry conducted is proper and confirmed the dismissal order given to the petitioner. Further contention raised by the learned counsel for the 1st respondent is that the inflation of purchased quantity on account of manipulation by the petitioner led to financial loss to the company though actual loss has not happened because of timely detection by the Security Guard. I find, enquiry was made by a reputed counsel who is a retired Labour Court Judge. Even though his findings are based on evidence, it is seen that the very same witness, the security guard when examined as PW2 in the criminal case, turned hostile. There is also controversy as to the exact mode of operation done by the petitioner in manipulating the result of the weighing machine because while the report given by the security officer to the Management talks about three iron pieces used by the petitioner to manipulate the result, the charge sheet speaks about only one iron piece. More over, another Assistant who was also charge sheeted along with the petitioner in the criminal case was allowed to retire

and draw his retirement benefits. It is seen that petitioner was in service of the 1st respondent company for 20 years prior to his involvement in the misconduct. Even though counsel for the management stated that petitioner caused heavy loss to the company, no previous instance of fraud is alleged or proved. He appears to have no black mark in his professional career for 20 years prior to his involvement in the misconduct. In the circumstances, I feel the punishment of dismissal is disproportionate to the gravity of the offence; more so, when the attempt of the petitioner did not end in any actual loss to the company on account of detection. In the circumstance, I uphold the order of the Labour Court in regard to the findings on misconduct, but reduce the punishment to discharge instead of dismissal. First respondent is accordingly directed to release terminal benefits to the petitioner treating it as a case of discharge from service from the date of suspension onwards.

This original petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg